

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN ORDER)
AUTHORIZING XCHANGE TELECOM CORP TO)
PROVIDE FACILITIES-BASED COMPETITIVE LOCAL) ORDER
EXCHANGE TELECOMMUNICATIONS SERVICES)
WITHIN THE STATE OF NEW JERSEY)

DOCKET NO. TE02050299

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N. J. S. A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated May 15, 2002, XCHANGE Telecom Corp. ("Petitioner" or "XCHANGE") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based competitive local exchange telecommunications services throughout the State of New Jersey.

XCHANGE Telecom Corp. was incorporated under the laws of the State of Delaware on March 13, 2002. Petitioner's principal offices are located at 1657- 49th Street, Brooklyn, New York 11204.

Petitioner has submitted copies of its Certificate of Incorporation and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, XCHANGE was formed to provide facilities-based competitive local exchange telecommunications services. Petitioner states that it has applied for authority to provide resold and facilities-based local and interexchange service in New York. Petitioner states that it has not been denied authority to provide telecommunications service in any state. At present, Petitioner is not providing telecommunications service.

In its Petition, Petitioner seeks authority to offer both resold and facilities-based competitive local exchange and interexchange telecommunications services to both business and residential customers. Petitioner initially intends to resell Local Exchange Carrier Services (LECS) to its end user customers as soon as XCHANGE enters into a resale/interconnection agreement with the Incumbent Local Exchange Carriers (ILEC). As market conditions warrant, Petitioner will augment its service offerings to include some facilities-based services.

Petitioner intends to employ a combination of its own equipment and facilities purchased from other entities in providing the proposed services. Petitioner will combine switchless resale, leasing of local loops in conjunction with company owned switching, and/or purchasing Unbundled Network Elements from Verizon. Petitioner's service includes, but is not limited to, data, internet, digital subscriber line, access, call waiting and forwarding, speed dialing, distinctive ringing, and three-way calling to business and residential customers. The Petitioner also plans to offer operator services, 911 and E911 service, directory listing, third party calling arrangements, local calling services and per use services such as call return and call redial.

Petitioner requests a waiver of N.J.A.C. 14:10-1.16(a) and N.J.S.A. 48:3-7.8 which requires that the company maintain its books and records in accordance with Uniform System of Accounts (USOA) and be kept within the State of New Jersey, respectively. Petitioner requests, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles. Petitioner also requests permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Brooklyn, New York. Petitioner also states that, upon written notice from the Board, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, XCHANGE states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to XCHANGE, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

Petitioner states that it is a privately held corporation and possess the sound financial, technical, managerial resources and experience to provide local exchange service which is demonstrated by its parent company's (Wesco, Inc.) financial statements attached to the Petition.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat.56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed XCHANGE's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner has demonstrated it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide facilities-based competitive local exchange telecommunications services in New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N. J. S. A. 48:2-59 and 48:2-60 and N. J. S. A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and the Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Telecommunications, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is the Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the

Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 02/20/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY